

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

JAMES BRUCE PREECE,

Debtor

Bankruptcy No. 03-44978
Chapter 7

Adversary No.

Ken Schoenfelder, Blue Skies, Inc.,

Plaintiff,

vs.

James Bruce Preece,

Defendant.

COMPLAINT

For their Complaint against Defendant, Plaintiff states and alleges as follows:

1. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334, 157.
2. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(I).
3. Plaintiff Blue Skies, Inc. ("BSI") is a Minnesota corporation doing business at 2331 Pine Star Lane SE, Rochester, Minnesota.
4. Helicopter Flight, Inc. ("HFI") is a Minnesota corporation doing business at 5930 Lakeland Avenue North, Minneapolis, Minnesota.
5. At all times relevant herein, James Bruce Preece has been the sole shareholder and President of HFI.
6. On August 3, 2001, Richard S. Stanger ("Stanger") purchased a Robinson helicopter, model R44, Serial No. 1090 and registration number 240RM (the "Helicopter").
7. In November of 2001, Stanger entered into a listing agreement with Defendant for the sale of the Helicopter. Under this Agreement Defendant was appointed as sales agent for a period of ninety days to sell the Helicopter for \$335,000.00. In exchange Defendants were to receive a commission of five percent of the sales price. Stanger delivered possession of the Helicopter to Defendants at approximately the same time.

8. By the terms of the Agreement, Defendant's appointment as Sales Agent would have expired on approximately February 20, 2002.
9. In March of 2002, Defendant contacted Plaintiff about a loan/purchase transaction regarding the Helicopter.
10. Prior to the contact in March of 2002, Defendant had not communicated with Plaintiff for a period of several years.
11. Defendant represented that he had the present ability to commit ownership and possession of the Helicopter to Plaintiff.
12. The terms of the arrangement proposed by Defendant to Plaintiff was memorialized in a writing signed by both parties and attached hereto as Exhibit "A."
13. Under the terms of Exhibit "A" Plaintiff was to transfer \$260,000.00 to Defendant for the purpose of acquiring the Helicopter. In the event Defendant did not repay the \$260,000.00, plus \$10,000.00, on or before May 21, 2002, Defendant was to transfer the Helicopter to Plaintiff and deliver an FAA Aircraft Bill of Sale to Plaintiff for the Helicopter.
14. On March 22, 2002, Plaintiff wire transferred \$260,000.00 to Defendant (the "Funds").
15. Defendant did not use the Funds to acquire title to the Helicopter. Instead he diverted it to his own use for other purposes.
16. At approximately the same time Defendant diverted the Funds, he was involved in a second claim by Dennis Brazier in which Dennis Brazier claimed that he had paid \$260,000.00 for a helicopter, but had not received the helicopter.
17. At the time Defendant diverted Plaintiff's Funds, he had no present ability to repay the funds to Plaintiff and he had no idea how he would go about repaying them.
18. Defendant has not repaid any of the Funds to Plaintiff.
19. On May 30, 2002, Defendant made out an FAA Aircraft Bill of Sale for the Helicopter, executed it, and delivered it to Plaintiff.
20. Neither Defendant nor HFI owned the Helicopter at the time Defendant accepted the Funds from Plaintiff, nor at the time Defendant delivered a Bill of Sale for the Helicopter to Plaintiff.
21. Defendant never informed Plaintiff that Stanger owned the Helicopter.

22. Defendant had never informed Stanger that Defendant had ostensibly sold the Helicopter to Plaintiff for \$260,000.00.
23. Upon learning about the transaction, Stanger asserted his ownership rights in the Helicopter.
24. Plaintiff commenced a lawsuit against Defendant in Olmsted County District Court in July of 2002.
25. The Olmsted County District Court entered summary judgment determining that Stanger was the rightful owner of the Helicopter.
26. Defendant filed his bankruptcy petition on July 11, 2003, before a final Judgment was entered against him in the State Court action.

COUNT I

27. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
28. Defendant obtained \$260,000.00 from Plaintiff by fraud, false pretenses or actual fraud.
29. Defendant owes a debt to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(2)(A).

COUNT II

30. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
31. In the alternative, Defendant obtained \$260,000.00 from Plaintiff by using a statement in writing that was materially false respecting Debtor's financial condition.
32. Defendant owes a debt to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(2)(B).

COUNT III

33. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
34. In the alternative, Defendant converted \$260,000.00 given to him by Plaintiff for the express purpose of acquiring the Helicopter to his own use and deprived the Plaintiff thereof.
35. Defendant obtained \$260,000.00 from Plaintiff by embezzlement and/or larceny.

36. Defendant owes a debt to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(4).

COUNT IV

37. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.

38. In the alternative, the document executed by the parties on March 21, 2002, (Exhibit “A”) constitutes an express trust in which Plaintiff is the settlor and beneficiary and Defendant was the trustee (the “Trust”).

39. Plaintiff delivered \$260,000.00 to Defendant in trust to be used to acquire the Helicopter.

40. Defendant’s use of Plaintiff’s funds for a purpose other than according to the terms of the Trust constitutes a defalcation while acting in a fiduciary capacity as trustee.

41. Defendant is indebted to Plaintiff in the amount of \$260,000.00 for the improper use of the Trust res.

42. Defendant’s debt to Plaintiff is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(4).

COUNT V

43. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.

44. In the alternative, Defendant’s conversion of Plaintiff’s \$260,000.00 constitutes a willful and malicious injury by Defendant to another entity or the property of another entity.

45. Defendant is indebted to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(6).

WHEREFORE, Plaintiff prays the Court enter its Judgment as follows:

1. Entering Judgment in favor of Plaintiff and against Defendant in the amount of \$260,000.00.
2. Declaring that such debt is not discharged by Defendant’s bankruptcy filing.
3. Such other and further relief as the Court deems just and equitable.

Dated: September 4, 2003.

DUNLAP & SEEGER, P.A.

By: /e/ Michael S. Dietz

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